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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/934,091

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Luca Blessent

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QUALCOMM INCORPORATED  
5775 MOREHOUSE DR.  
SAN DIEGO, CA 92121

EXAMINER

SCHEIBEL, ROBERT C

ART UNIT

PAPER NUMBER

2619

NOTIFICATION DATE

DELIVERY MODE

03/26/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com  
kascanla@qualcomm.com  
nanm@qualcomm.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/934,091	<b>Applicant(s)</b> BLESSENT ET AL.	
	<b>Examiner</b> ROBERT C. SCHEIBEL	<b>Art Unit</b> 2619	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

- Examiner acknowledges receipt of Applicant's Amendment filed 11/13/2007.
- Claims 1, 5, 6, and 10 are currently amended.
- Claims 11-15 have been added.
- Claims 1-15 are currently pending.

### ***Response to Arguments***

1. Applicant's arguments, see page 10, filed 11/13/2007, with respect to the objections to the drawings have been fully considered and are persuasive. The objections to the drawings have been withdrawn.
2. Applicant's arguments, see page 10, filed 11/13/2007, with respect to the objections to claims 1 and 6 have been fully considered and are persuasive. The objections to claims 1 and 6 have been withdrawn.
3. Applicant's arguments, see page 10, filed 11/13/2007, with respect to the rejection of claims 5 and 10 under 35 U.S.C. 112, second paragraph, have been fully considered and are persuasive. The rejection of claims 5 and 10 under 35 U.S.C. 112, second paragraph, has been withdrawn.
4. Applicant's arguments, see page 10, filed 11/13/2007, with respect to the rejection under obviousness-type double patenting have been fully considered and are persuasive. The rejection under obviousness-type double patenting has been withdrawn.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims **11-15** rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Specifically, these claims specify “a computer program product... comprising: a computer-readable memory comprising code...”. There is no support in the specification for a computer program product, a computer-readable memory, or code. Unless Applicant can provide specific support in the original disclosure for these limitations, these claims must be cancelled to overcome this rejection.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims **11-15** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims **11, 12, 14, and 15** claim “a computer-readable memory comprising code...” which is vague and indefinite because it is unclear how a memory can comprise code. A memory

can have code stored on it, recorded on it, etc, but it is not clear how it can just comprise code.

Claim 13 is also rejected since it depends from claim 12 and thus contains the same deficiency.

### ***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims **11-15** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims **11, 12, 14, and 15** are drawn toward “a computer-readable memory comprising code...” and thus are non-statutory because a "computer-readable memory" cannot comprise "code"; as a result the memory is just code and therefore fails to fall within a statutory category under 101. Software instructions, or any type of “functional descriptive material”, are not statutory when claimed as descriptive material, per se. See pages 50-57 of “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”.

Claim **13** is also rejected since it depends from claim 12 and thus contains the same deficiency.

### ***Allowable Subject Matter***

10. Claims **1-10** are allowed.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT C. SCHEIBEL whose telephone number is (571)272-3169. The examiner can normally be reached on Mon-Fri from 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing F. Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2619

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert C. Scheibel  
Examiner  
Art Unit 2619

/R. C. S./  
Examiner, Art Unit 2619

/Wing F Chan/  
Supervisory Patent Examiner, Art Unit 2619  
3/11/08